IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.06.2006

CORAM:

THE HON'BLE MR. JUSTICE P.SATHASIVAM

AND

THE HON'BLE MR. JUSTICE V.DHANAPALAN

WRIT APPEAL Nos.1715 to 1717 OF 2003

and WAMP.No.2352 of 2003

M/s. Prix Trade and Agencies Pvt. Ltd.,
represented by its Director
Mr. Jitendra Kumar, rep. by its
Power of Attorney Agent
Mr. Pawan Chowdhary. .. Appellant in all W.As.

vs.

1. A.Pasupathy

2. The State of Tamil Nadu
   rep. by the Secretary to Government
   Housing and Urban Development
   Fort St. George, Chennai 9.

3. The Special Deputy Collectorate
   (Land Acquisitions)
   Tamil Nadu Housing Board Schemes
   Nandanam, Chennai 35.

4. The Special Tahsildar
   (Land Acquisitions) IV
   Tamil Nadu Housing Board Schemes
   Nandanam, Chennai 35.

5. The Special Tahsildar
   (Land Acquisition)
   Chennai Metropolitan Development
   Authority Schemes
   Talamuthu Natarajan Maligai
   Gandhi Irwin Road
   Chennai 8. .. Respondents in all Was.

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Writ Appeals filed under Clause 15 of the Letters of Patent against the common order of the learned Judge Mr.Justice V.Kanakaraj dated 29.08.2002 made in W.P.M.P.SR.Nos.44519 to 44521 of 2002 in W.P.No.5024 of 1998.

For appellant : Mr.AR.L.Sundaresan,Sr.Counsel
for Ms.A.L.Gandhimathi

For respondents: Mr.M.Dhandapani
2 to 5 Addl. Govt., Pleader

COMMON JUDGMENT

(Judgement of the Court was delivered by P.SATHASIVAM,J.)

The above writ appeals are filed against the common order of the learned single Judge dated 29.08.2002 in and by which the learned Judge dismissed the Writ Miscellaneous Petitions as not maintainable.

2. In the light of the order to be passed hereunder, we are of the view that it is unnecessary to refer the factual matrix as stated in the affidavit. Learned senior counsel for the appellant by placing reliance on an earlier Division Bench decision of this Court dated 27.02.2004 made in W.A.Nos.2384 of 2386 of 2003 (M/s. Prix Trade and Agencies Pvt. Ltd., vs. S. Ramalingam and others), submitted that present appeals may be remitted back to the learned single Judge with a direction to consider the application for condonation of delay. The learned senior counsel has also pressed into service the decision of the Supreme Court in Raj Kumar vs. Sardari Lal (2004 (1) Supreme 532), wherein at the initial stage the respondents generally raised an objection with regard to the claim of the appellant, the Hon'ble Supreme Court has held that, in a lis pendens transferee, though not entitled to file an application under Order 22 Rule 10 CPC, is entitled to move an application under Order 9 Rule 13 CPC for a limited purpose, viz., to set aside the decree passed against his transferor. Further, as to availability of sufficient cause and for condoning delay, it would depend upon the materials and we are not expressing anything on the delay or the entitlement or the relief prayed by the appellants who are all subsequent purchasers. It is also brought to our notice that following the above said decision of the Supreme Court the earlier Division Bench, allowed similar appeals and remitted back the matter to the learned single Judge with a direction to consider the application for condonation of delay.

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3. In view of the decision of the Supreme Court, which was followed by the earlier Division Bench in the above referred case, we allow the above appeals and remit the matter back to the learned single Judge with a direction to consider the application for condonation of delay. It is made clear that in case the delay is condoned the order of dismissal for default shall be set aside subject to sufficient cause being shown and the appellant impleaded as a party to the writ petitions and allowed to prosecute the same.

The writ appeals are disposed of accordingly. No costs. Consequently, connected WAMP., is closed.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1 The Secretary to Government,State of Tamil Nadu
Housing and Urban Development,Fort St. George, Chennai 9.

2. The Special Deputy Collectorate1
(Land Acquisitions),Tamil Nadu Housing Board Schemes
Nandanam, Chennai 35.

3. The Special Tahsildar,(Land Acquisitions) IV
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Chennai Metropolitan Development
Authority Schemes,Talamuthu Natarajan Maligai
Gandhi Irwin Road,Chennai 8.

+ three copies to M/S.A.L.Gandhimathi, Advocate Sr.No.25357 to 25359.

MAB (CO)
RSM/23.6.2006

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